

AFL-CIO (Union) filed unfair labor practice (ULP) charges against Grafton County Nursing Home (County) on November 5, 1993 alleging a decrease in work hours of and coercive conduct on a union supporter/organizer during an organizational campaign in violation of RSA 273-A:5 I (a), (b) and (c). The County filed its answer on November 13, 1993 after which this matter was consolidated for hearing with five other cases and heard by the PELRB on March 29, 1994.

FINDINGS OF FACT

1. Grafton County is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Federation of Nurses and Health Professionals is a labor organization which conducted a campaign to organize employees of the County at its nursing home. The first informational meeting involving this effort occurred May 28, 1993, notwithstanding that the certification petition was not filed with PELRB until September 15, 1993.
3. After the informational meeting of May 28, 1993, which was also attended by some supervisors and members of management, subsequent organizational meetings were held in the private residences of Claire Pond and Bruce Newton. Newton is the subject of this case and, according to the Union's allegations, suffered a reduction in the number of hours he was offered to work as the result of his open support for the Union.
4. Newton is/was a regular, part-time employee. He described himself as a "dietary aide." Edna Bowley, his supervisor, described him as a "utility dishwasher." He has since voluntarily left the employment of the County earlier in March of 1994. He had been employed since December 24, 1991.
5. Newton was compensated on a bi-weekly basis. Between January 9, 1993 and October 16, 1993, excluding four pay periods between May 15, 1993 and June 26, 1993 when he had asked for extra time off, his average pay per period was \$193.85. For the next five pay periods, from October 30, 1993 through December 25, 1993, his pay was \$16.12, \$20.45, \$19.34 and \$78.46, respectively. (Union Exhibit No. 1).
6. When Newton's work hours diminished between October 30, 1993 and December 25, 1993, he asked his supervisor, Bowley, why this had happened. He claims that

Bowley said he was not doing a good job and that she wanted to know who was complaining about use of inmates in the kitchen. He told her he complained because his hours were shortened.

7. Edna Bowley has been the County's Food Manager for 23 years. She is responsible for scheduling all employees in the dietary department, including Newton. She testified that Newton had no guaranteed hours and did not want steady hours on a year round basis. She also said it was her policy to use inmates first, if available, because they cost less to use than to call spares or utility workers, such as Newton, who earn hourly wages.
8. Bowley testified that Newton had failed to come to work four times in September and October, namely, September 3rd, September 9th, October 19th and October 25th. Notwithstanding this, the reduction in Newton's hours between October 30, 1993 and December 25, 1993 was attributable to the availability of "two good inmates" during that time.
9. Bowley was unaware of Newton's organizational efforts on behalf of the Union until the last of October or the first of November when he asked to post pro-union material on a bulletin board.

DECISION AND ORDER

The Union has alleged violations of RSA 273-A:5 I (a), (b) and (c) yet it left uncontested Bowley's assertions that Newton's work record left something to be desired between September 3rd and October 25th (Finding No. 8) and that he was a slow tray line worker. Likewise, it produced no testimony from Newton or any co-workers that the changes in his hours after October 30, 1993 (Finding No. 5) resulted in feelings of coercion, domination, interference or discouragement involving the organizational campaign. While the County has established a bona fide business reason for the decrease in Newton's hours after October 30, 1993 (i.e., there were "two good inmates available" at no hourly cost), the Union neither rebutted this nor did it establish that there was a motive other than the foregoing business purpose for the reduction in hours.

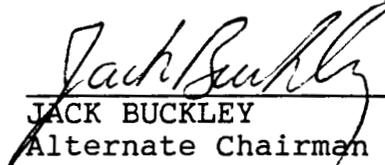
The Union cannot prevail on an argument that Newton was set up, held to ridicule or used as an example of what happens to union activists without an affirmative showing that his circumstances were known to other employees who reacted thereto by being frightened, intimidated, coerced or by having their compensation, benefits or privileges reduced or withdrawn as retaliatory measure. In Appeal of White Mountains Education Association, 125 N.H. 771 at

777 (1984), the New Hampshire Supreme Court said "that a complainant under RSA 273-A:5 I (a) and (d) must prove that retaliation was a motivating influence at least to some degree." Such a showing has not occurred in this case.

The ULP is hereby DISMISSED.

So ordered.

Signed this 18th day of April, 1994.



JACK BUCKLEY
Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding.
Members Richard Roulx and E. Vincent Hall present and voting.